IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 548 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant

Versus

BHARATBHAI BALUBHAI LAD & 4 – Respondents

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Appearance :

MR ND GOHIL ADDL PUBLIC PROSECUTOR for Appellant

MR JB PARDIWALA for Respondents

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 19/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1.The acquittal of the respondents ('accused' for short) of the offences punishable under Sections 306, 498-A,

323, 504 and 114 of the Indian Penal Code ('IPC' for short) recorded by the learned Additional Sessions Judge, Fast Track Court, Navsari, vide judgment and order dated 6.11.2003 rendered in Sessions Case No. 19 of 2003, is the subject matter of challenge in instant appeal, which is filed under Section 378 of the Code of Criminal Procedure ('the Code' for short) by the appellant - State of Gujarat.

2. The prosecution case as reflected from FIR and unfolded during trial was that :

2.1 On 23.1.2003, Vinodbhai Ranchhodbhai Mistry, PW-1, lodged a First Information Report at Navsari Rural Police Station against the accused for the commission of offences punishable under Sections 306, 498-A, 323, 504 and 114 of the IPC. Vinodbhai Ranchhodbhai Mistry happens to be the brother-in-law of deceased Jaynaben. As per the narration given in the FIR by him, deceased Jaynaben was married to accused No. 1 at village Rumla on 19.5.2002 as per the Hindu Rites and Customs and since then, she and accused No. 1 were residing at Rumla. Along with deceased Jaynaben and accused No. 1, the other accused persons i.e. A2, father-in-law, Balubhai Jivanbhai Lad, A3, mother-in-law, Chhibiben Balubhai Lad, A4, brother-in-law, Maheshbhai Balubhai

Lad , A5, sister-in-law, Bhavnaben Maheshbhai Lad were also residing in one house. As per the further case of the prosecution, initially for a period of three months, the marital life of deceased Jaynaben and accused No. 1 was quite cordial but thereafter, as alleged, the family members of A-1 started harassing her on trivial matters like household work etc. It was also the case of the prosecution that all the accused persons, in collusion with each other, used to treat her with cruelty and at times the husband i.e. A-1 on instigation from the other co-accused persons, used to assault her. All these facts of harassment was narrated by her to her family members for the first time when she came at the house of her parents during Diwali season. At that relevant point of time, the parents of the deceased felt that it would be in the larger interest of their daughter Jaynaben to return to her matrimonial home with a hope that everything would be fine with the passage of time. About 15 days before the incident in question, Jaynaben came down to her parental home on account of harassment at the end of the accused persons. The first informant and his wife thereafter met Jaynaben and learnt through her that all the accused persons, on one pretext or the other,

picked up quarrels with her and were causing lot of mental and physical harassment to her. Jaynaben also informed the first informant that as and when she desired to talk to her mother on telephone, the accused persons did not permit her to talk. It was also the case of the first informant that his mother-in-law i.e. mother of Jaynaben had called up the accused persons requesting them to take Jayna back with them but they refused and because of that she was at her parental home since previous 15 days from the date of the incident.

2.2 On 23.1.2003, at about 1.30 in the afternoon, the first informant was informed by Jigisha, the younger sister of Jaynaben, that Jaynaben sustained serious burn injuries. The first informant immediately rushed to Sisodara and found that Jaynaben had burnt herself very seriously all over the body after dousing herself in kerosene. People from the neighbourhood had gathered and one of the neighbours, Nileshbhai Umedbhai Patel, informed the first informant that at about 1-30 in the afternoon husband of Jaynaben, accused No. 1, had called her up on telephone and Jayna had come to talk with accused No. 1 on telephone. After talking with each other on telephone for some time Jaynaben

returned home and immediately within half an hour the incident in question occurred. It was the case of the prosecution that, Nileshbhai Umedbhai Patel, PW-3, residing next to the house of the parents of the deceased, rushed at the house after having found that something was on fire and broke open the door which was locked from inside. He found Jaynaben in a burned condition. Nileshbhai Patel poured water on her body and inquired with her as to what she had done. In reply to the question put by Nileshbhai, Jaynaben was said to have told Noleshbhai that her husband, A-1 did not talk properly with her on telephone and also told her that he would not come to take her back. Because of this behaviour on the part of accused No. 1, she felt bad on account of which she doused herself in kerosene and set herself on fire. The first informant learnt about this fact through Nileshbhai Patel, PW-3. Thereafter, Jaynaben was put in a jeep by the first informant, Nileshbhai and others and was shifted to Navsari Civil Hospital, where the doctors declared Jaynaben dead.

2.3 FIR was lodged on the same day i.e. on 23.11.2003 at 5-30 PM, which was registered vide CR. I. No. 15 of 2003 against the accused for offences punishable under Sections 323, 504, 498-A, 306 and 114

of the IPC.

2.4 During the course of investigation, the Investigating Officer had recorded statement of witnesses, drawn panchnama of the scene of offence, inquest panchnama was also prepared, dead body of Jaynaben was sent for autopsy, collected autopsy report and as sufficient incriminating evidence against the accused was found, they came to be charge sheeted in the court of learned JMFC, Navsari, who committed the case to the court of Sessions of Navsari District as the offences alleged against the accused were exclusively triable by the court of Sessions.

2.5 On committal, the case was transferred and placed for trial before the learned Additional Sessions Judge and Fast Track Court, Navsari, who framed the charge against the accused. The accused pleaded not guilty to the charge and claimed to be tried. Thereupon, the accused were put to trial and tried in Sessions Case No. 19 of 2003.

2.6 In order to bring home the charge levelled against the accused, the prosecution has examined as many as 7 witnesses and relied upon their oral evidence, the details of which have been given in para 4 of the impugned judgment and order. They are as

under:-

(i) PW-1 Vinodbhai Ranchhodbhai Mistry (First Informant) Ex.20

(ii) PW-2 Dr. Ajaykumar Jankiprasad Sharma (Medical Officer, Civil Hospital, Navsari – doctor who performed the Postmortum) Ex.22

(iii) PW-3 Nileshbhai Umedbhai Patel (the neighbour before whom oral dying declaration is said to have been made by the deceased) Ex.25

(iv) PW-4 Gitaben Jagubhai Mistry (mother of the deceased) Ex.26

(v) PW-5 Jigishaben Sumanbhai Mistry (Sister of the deceased) Ex.27

(vi) PW-6 Dilipbhai Batabhai Patel (PSO) Ex.28.

(vii) PW-7 Jayendrasinh Ajaysinh Jade (Sr. PSI Investigating Officer) PW-29.

2.7 The prosecution has also produced number of documents and relied upon the contents of the same, the details of which have been given in para 5 of the impugned judgment and order. They are as under :-

(i) Ex.11 – Panchnama of place of incident

(ii)Ex.12 Inquest panchama of the deceased

(iii)Ex.13 panchnama of seizure of the cloths and ornaments of the deceased.

(iv) Ex.14 Panchnama of the person of the accused

(v) Ex.15 note of muddamal sent to FSL

(vi) Ex.21 complaint

(vii)Ex.23 certificate showing the cause of death of deceased Jaynaben.

(viii)Ex.24 PM note of deceased Jaynaben

(ix) Ex.30 FSL report.

2.8 After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statement under Section 313 of the Code. In their further statement they denied the case of the prosecution in toto. They neither led any evidence nor examined any witness to support their defence.

2.9. At the end of the trial, on appreciation, evaluation and analysis of the evidence on record, the learned Additional Sessions Judge came to the conclusion that the prosecution has not been able to prove the guilt of the accused persons beyond reasonable doubt. He also came to the conclusion that evidence on record was not sufficient to constitute and punish the accused persons for the offence under

Section 306 of the IPC i.e. abetting the commission of suicide by deceased Jaynaben. He also came to the conclusion that there was no cogent, convincing and dependable evidence of harassment and cruelty within the meaning of Section 498-A IPC. So far as charge for the offence under Sections 323 and 504 of IPC was concerned, the prosecution had practically conceded that even the charge for these two offences could not have been framed. On the aforesaid premises, the learned Additional Sessions Judge recorded findings of not guilt against the accused and resultantly acquitted the accused of the offences with which they were charged, which has given rise to instant appeal at the instance of the appellant – State of Gujarat.

3. We have considered the submissions advanced by Mr. N.D.Gohil, learned Addl.P.P. for the appellant State of Gujarat and Mr. J.B. Pardiwala, learned advocate of the accused. We have perused the impugned judgment and order, set of evidence copies whereof have been supplied by learned advocates appearing for the parties during the course of submission, R&P of the Sessions Case No. 19 of 2003, which have been called for by this court and the judgments cited at bar.

4. On reanalysis, reevaluation, reappreciation and close

scrutiny of the evidence, the following are the salient features of the prosecution case and the intrinsic evidence which has come on record.

(i) Marriage of deceased Jaynaben with accused No. 1 was solemnized on 19.5.2002.

(ii) Initially for a period of three months, there was no problem between the deceased and accused No. 1 and the marital life was quite cordial.

(iii) Deceased committed suicide on 23.1.2003. The total marital life span of the deceased was about 10 months. Out of 10 months for about 3 months there was no problem at all and for about one and half months the deceased was at her parental home.

(iv) The deceased committed suicide at her parental home. She was at the house of her parents for past 15 days prior to the incident. The sudden cause of so-called provocation was the telephone call of accused No. 1 and accused No. 1 not talking properly with the deceased.

(v) As per the FIR, there was a settlement between the two sides, i.e. the accused persons and the family members of the deceased and after settlement deceased was sent back to her matrimonial home.

(vi) The allegations of mental as well as physical cruelty are general in character. They are all mundane matters and very trifle in nature.

5. To prove the suicidal death of the deceased, the prosecution has examined PW-2 Dr. Ajaykumar Jankiprasad Sharma, Medical Officer at Ex.22, who had performed autopsy on the dead body of Jaynaben and prepared the autopsy report at Ex.23. A perusal of the oral evidence of Dr. Ajaykumar Sharma and autopsy report, there is no manner of doubt that deceased died suicidal death.

6. Having held that the deceased died suicidal death, now the next question which arises for our consideration is as to whether the deceased was subjected to the physical and mental cruelty at the hands of the accused. In this connection, the prosecution has mainly relied upon the evidence of PW-1, Vinodbhai Ranchhodbhai Mistry, who is the complainant, whose evidence was recorded at Ex.20, PW-4 Gitaben Jagubhai Mistry, mother of the deceased, whose evidence was recorded at Ex.26, PW-5 Jigishaben Sumanbhai Mistry, sister of the deceased, whose evidence was recorded at Ex.27 and PW-3 Nileshbhai Umedbhai Patel, next door neighbour of the complainant Vinodbhai Mistry, whose evidence was recorded at Ex.25. On perusal of their

evidence, it is seen that the allegation with regard to the physical and mental cruelty meted out by the accused to the deceased are general in nature and not in reference to any specific incident.

7. So far as the abatement made by the accused to the deceased to commit suicide is concerned, according to us, there is no evidence. It is a settled legal provision of law that for bringing home the charge under Section 306 of IPC, there must be some evidence adduced on record showing that soon before the incident there was some harassment and torture to the deceased at the hands of the accused. Section 107 of IPC is with regard to the abetment and as per the provisions of this section, there must be some evidence that soon before the incident there must be some incident due to which she was prompted, instigated or abetted to commit suicide.

8. So far as the reported decision laying down the proposition of law on the question of abatement to commit suicide is concerned, they are legion. However, we would not make a reference to all of them with a view to avoid the repetition and to burden this judgment. Some of the reported recent decisions are as under :-

(i) In case of **SUSHIL KUMAR SHARMA vs. UNION OF INDIA**,

reported in 2005 AIR SCW p.3569, the Supreme Court makes it very abundantly clear that mere harassment or cruelty by the husband or his relatives would not constitute an offence of abetting the commission of suicide. Supreme Court in four lines has explained the correct position of law very succinctly. The relevant paragraph is reproduced herein below :

“Basic difference between the two Sections i.e. Section 306 and Section 498-A is that of intention. Under the latter, cruelty committed by the husband or his relations drag the women concerned to commit suicide while under the former provision suicide is abetted and intended.”

In the instant case, the prosecution at best can argue that whatever has been said by each of the witnesses so far as the harassment meted towards the deceased is concerned dragged the deceased to commit suicide but there is not an iota of evidence to even remotely suggest that the accused persons ever intended the consequences of the act or they abetted the commission of suicide.

(ii) In **SWAMY PRAHALADDAS vs STATE OF M.P. & Anr.** Reported in 1995 Supp.(3) SCC p.438, the appellant was charged for an offence under Section 306, IPC on the ground that the appellant during the quarrel is said to

have remarked the deceased 'to go and die'. The Supreme Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima-facie enough to instigate the deceased to commit suicide.

(iii) In **MAHENDRASINH vs. STATE OF M.P.,** reported in 1995 Supp. (3) SCC p.731, the appellant was charged for an offence under Section 306 IPC mainly based upon the dying declaration of the deceased, which reads as under:-

“My mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My husband Mahendra wants to marry second time. He has illicit connections with my sister-in-law. Because of those reasons and being harassed I want to die by burning.”

The Supreme Court, considering the definition of 'abetment' under Section 107 IPC found that the charge and conviction of the appellant for an offence under Section 306 is not sustainable merely on the allegation of harassment to the deceased. The Supreme Court further held that neither of the ingredients of abetment are attracted on the statement of the deceased.

(iv) In **RAMESH KUMAR VS. STATE OF CHHATTISGARH** reported

in (2001) 9 SCC p.618, the Supreme Court while considering the charge framed and the conviction for an offence under Section 306 IPC on the basis of dying declaration recorded by an Executive Magistrate, in which she had stated that previously there had been quarrel between the deceased and her husband on the day of occurrence she had a quarrel with her husband who had said that she could go wherever she wanted to go and that thereafter she had poured kerosene on herself and had set fire, acquitting the accused the Supreme Court said :-

“A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged and such petulance discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty.”

(v) In **Sanju alias Sanjay Singh Sengar v. State of Madhya Pradesh,** 2002 AIR SCW 2035 (SC), the Supreme

Court in para 13 has observed as under :-

“Even if we accept the prosecution story that the appellant did tell the deceased 'to go and die', that itself does not constitute the ingredient of 'instigation'. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the word uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional.”

9. The principle of law which has been explained in each of the above referred judgments of the Supreme Court is that before a person can be held guilty for abetting the commission of suicide, the prosecution must establish by cogent, convincing and overwhelming evidence that the accused intended the consequences of the act namely suicide and abetted the suicide within the meaning of Section 107 of IPC. Mere harassment or cruelty which drags the woman to commit suicide is not sufficient to constitute the offence under Section 306 of IPC.

10. Applying the principle laid down by the Supreme Court in above referred to judgments to the facts of instant

case, we are of the considered opinion that mere allegations which are general in nature with regard to the deceased was subjected to mental and physical cruelty at the hands of the accused, offence under Section 306 cannot be proved.

11.Now, coming to charge under Section 498-A of the IPC i.e. Cruelty, it requires to be appreciated that it speaks of cruelty by husband or the relatives of the husband. The first part of this Section provides for the punishment for the person, namely the husband or the relative of the husband of a woman who subjects the woman to cruelty. Explanation makes it clear as to what meaning would be given to the term 'cruelty'. Explanation (a) says that any willful conduct which is of such a nature as is likely to drive the woman to commit the suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman would amount to cruelty. Explanation (b) says that cruelty would mean the harassment of the woman with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

(a) The evidence of PW-1, Vinodbhai Ranchhodbhai Mistry, the first informant, is at Ex.20. He has

interalia testified that initially for a period of three months the relations of the deceased with accused No. 1 husband was cordial and the other accused persons also used to treat the deceased cordially. Thereafter, all accused persons started finding fault with the deceased on trivial matters like household work and also used to beat the deceased. The first informant in his evidence says that he was informed about this harassment by her mother in law when the deceased for the first time informed her mother at her parental home. The evidence of the first informant so far as harassment to deceased is concerned, is hearsay because he admits that he learnt it through her mother in law.

(b) The evidence of PW-3, Nileshbhai Umedbhai Patel, Ex. 25, is to the effect that he is the next door neighbour of the parents of the deceased. This witness says that the deceased used to frequently visit his house and used to tell him that her in-laws are harassing her. This witness speaks about the so called oral dying declaration made by the deceased stating that she cannot live anymore. This witness speaks about the telephonic conversation between the deceased and accused No. 1 on the date of the incident. Beyond this, this witness does not say anything.

(c.) PW-5, Jigishaben Sumanbhai Mistry, sister of the

deceased, Ex.27, in her evidence has stated about the harassment meted by the accused persons towards her deceased sister. The allegations are general in nature.

12. It is settled principles of law so far as Section 498-A IPC is concerned that to constitute an offence of cruelty as explained under Section 498-A of IPC, willful conduct which is of such a nature as is likely to drive the woman to commit the suicide should be cogently established to hold the accused persons guilty of the said offence. In the instant case, there was no demand for dowry nor abetment of suicide nor cruelty to the deceased is established. Some unhappy note / incident during the short married life between the husband and the wife cannot be the circumstance to constitute an offence of cruelty or harassment within the meaning of Section 498-A IPC.

13. The law so far as Section 498-A IPC is concerned needs to be examined considering the following two decisions of the Supreme Court :-

(i) Gananath Patnayak Vs. State of Orissa – 2002 SCC (Criminal) 461.

(ii) Inderpal Vs. State of M.P. - 2002 Cri.L.J.926.

14. The ratio of both the decisions is to the effect that all the statements made by the deceased to her family members regarding the alleged harassment and cruelty

meted towards her would fall within the purview of hearsay evidence. It is an admitted fact that none of the witnesses examined by the prosecution have said that they have with their eyes seen the accused persons assaulting the deceased or treating her with cruelty. All the witnesses have deposed on the strength of the information which the deceased used to provide when she used to come at her parental home. Such a statement is not admissible in evidence for the offence punishable under Section 498-A of IPC and has to be termed as being only a hearsay evidence.

15. Section 32 of the Evidence Act is an exception to the hearsay rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the hearsay rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused persons for the offence punishable under Section 498-A of IPC.

16. The above position of law will have to be examined in light of the fact that the accused persons have been acquitted from the charge of Section 306 IPC and in fact there is not an iota of evidence to connect the

accused persons with the charge under Section 306 IPC. The so called oral dying declaration before PW-3 Nileshbhai Umedbhai Patel Ex.25 also pales into insignificance because according to the evidence of PW-2, Dr. Ajaykumar Jankiprasad Sharma, Exh.22 the deceased could not have uttered a single word considering the nature of injuries sustained by her and the death must be instantaneous. Even if it is believed that the deceased could have been able to utter few words at the relevant point of time, the offence under Section 306 being not established the statement would not be admissible under Section 32 of the Evidence Act which can be said to be a statement as to the cause of the death of the deceased or as to any of the circumstances of transaction which resulted in the death of the deceased, in cases in which the cause of death comes into question.

17.This court in case of **INDRASINGH M. RAOL VS. STATE OF GUJARAT,** reported in 1999(3) GLR p.2536 has explained the concept of cruelty within the meaning of the definition as provided under Section 498-A of IPC. The ratio of this decision is that every act of cruelty or harassment is not made a crime under Section 498-A. The prosecution has to establish that the cruelty or harassment was unabetted, incessant and persistent and

being grave in nature unbearable and the same was with the intention to force the woman to commit suicide or to fulfill illegal demand or dowry of the husband or her in-laws. As held by this Court, Section 498-A will not come into play in every case of harassment and/or cruelty. Reasonable nexus between cruelty and suicide must be established. It should, therefore, be shown that the incessant harassment or cruelty was with a view to force the wife to end her life or fulfill illegal demands of her husband or in-laws, and was not matrimonial cruelty, namely, usual wear and tear of matrimonial life.

18.Supreme Court in case of **Rameshkumar (Supra)** has also explained the principle of Section 113-A of the Evidence Act in paras 12 and 13 of the judgment. Supreme Court has observed as under :-

“**para 12** :To attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. The existence and

availability of the above said three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the Court shall have to have regard to 'all the other circumstances of the case.'

"**para 13** : The expression – 'The other circumstances of the case' used in Section 113A suggest the need to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least the presumption is not an irrebuttable one. In spite of a presumption having been raised, the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The present case is not one which may fall under clauses, secondly and thirdly of Section 107 of Indian Penal Code."

19.It was also the case of the prosecution that dying declaration made by deceased before PW-3, Nileshbhai Patel, was sufficient to connect the accused with the alleged crime. Before the oral dying declaration of the deceased is accepted by the Court, the decision of the Supreme Court in the matter of **HAIKRUJAM CHAOBA SINGH VS. STATE OF MANIPUR,** reported in 1999 AIR SCW p.4181 is required to be considered. Para 3 of the said judgment reads as under :-

"**para 3** : Any oral dying declaration, no doubt, can form the basis of conviction, though Court seek for corroboration as a rule of prudence. But before the said declaration can be acted upon, the Court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. The dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability."

20.Oral dying declaration has been rightly disbelieved by the trial Court on the following circumstances :-

(a) PW-3, Nileshbhai Umedbhai Patel, Ex.25 is the person, who, with the help of Halpati, broke open the door and poured water on the body of the deceased and at that relevant point of time, on inquiry, the deceased is said to have made a statement before Nileshbhai that she cannot bear any more and that is why she has taken this extreme step. Nileshbhai, accompanied PW-1, Vinodbhai Mistry, to the Police Station. When PW-1, Vinodbhai Mistry, gave the first information report, Nileshbhai was very much present with him in the Police Station but Nileshbhai did not state anything about deceased making such a statement

before him and that is the reason why there is no mention of any such oral dying declaration or statement in the FIR.

(b) The evidence of PW-2, Dr. Ajaykumar Jankiprasad Sharma, Exh.22, is to the effect that the whole body of the deceased was congested and stiff. Eyes were closed. Tongue was protruding. All over the body right from top to bottom there were 3rd degree 100% burns. According to him,the death must be instantaneous and considering the nature of burn injuries all over the body deceased could not have uttered a single word.

(c.) There is contradiction in the evidence of PW-2, Nileshbhai Patel, Ex.25 and PW-4, Geetaben Mistry, Ex.26,,so far as the so called oral dying declaration is concerned.

(d) PW-4, Geetaben, the mother of deceased, has admitted that when she tried to inquire with her daughter as to why did she take such a step, she was unconscious and was not able to talk.

(e) There is contradiction between the evidence of PW-3, Nileshbhai Patel, Ex.25 and the evidence of PW-5, Jigishaben Mistry, Ex.27 so far as the exact words uttered by the deceased at the relevant point of time is concerned.

21.On overall view of the matter, according to us, the

evidence of PW-3, Nileshbhai Patel, does not inspire any confidence. It has to be held that when the deceased was not in a physical state of affairs to utter a single word, the alleged oral dying declaration made by the deceased before him is nothing but an afterthought by the prosecution and Nileshbhai has stated the version of oral dying declaration just with a view to favour the complainant and prosecution. Therefore, according to us, the prosecution has failed to prove the charges levelled against the accused as there is no evidence against the accused to connect them with alleged crime.

22. In view of the unsatisfactory evidence led by the prosecution, according to us, the findings recorded by the learned Additional Sessions Judge are absolutely just and proper and in recording the said findings no illegality or infirmity is committed by him. We are in complete agreement with the findings, ultimate conclusion and resultant order of acquittal recorded by the learned Additional Sessions Judge, as, in our view, no other conclusion is possible except the one reached by the learned Additional Sessions Judge.

23. This is an acquittal appeal. The principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the Trial

Court have been very succinctly explained by the Supreme Court in the matter of **AJIT SAVANT MAJAGAVI VS. STATE OF KARNATAKA,** reported in AIR 1997 p.3255.

(a) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against an order of conviction.

(b) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(c.) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds not subscribing to the view expressed by the trial Court that the accused is entitled to acquittal.

(d) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial Court.

(e) If the High Court, on a fresh scrutiny and reappraised of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(f) The High Court has also to keep in mind that the trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court, especially in the witness box.

(g) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.

24. In **ANOKH SINGH vs. STATE OF PUNJAB**, reported in AIR 1992 SC p.598, Supreme Court has held that in an appeal against acquittal, the High Court should attach greater weight to appreciation of evidence by the Trial Judge who had the occasion to watch the demeanour of the witnesses.

25. It is a cardinal principle of criminal jurisprudence that in an acquittal appeal if other view is possible then also appellate Court cannot substitute its own view by reversing the acquittal into conviction, unless the findings of the trial Court are

perverse, contrary to the material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable. (See Ramesh Babulal Doshi V. State of Gujarat (1996) 9 SCC 225). In the instant case, the learned APP has not been able to point out to us as to how the findings recorded by the learned Additional Sessions Judge are perverse, contrary to material on record, palpably wrong, manifestly erroneous or demonstrably unsustainable.

26. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Additional Sessions Judge for acquitting the accused. Suffice it to say that the learned Additional Sessions Judge has given cogent and convincing reasons for acquitting the accused and the learned A.P.P. has failed to dislodge the reasons given by the learned Additional Sessions Judge and convince this Court to take a view contrary to the one taken by the learned Additional Sessions Judge.

27. Seen in the above context, we do not find any valid reason or justifiable ground to interfere with the impugned judgment and order acquitting the accused of the offences with which they were charged.

28. For the foregoing reasons, the leave to appeal is

refused and appeal is dismissed at the threshold.

(A.M. Kapadia, J.)

(S.R. Brahmbhatt, J.)

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